

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-455 - June 8, 1984

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the level of health benefits for podiatric services. They hereby render their opinion on the matter.

Background Facts

The Employee is an active miner eligible for health benefits under the Employer's Benefit Plan. On April 14, 1983, his dependent daughter underwent corrective surgery in a podiatrist's office to correct a "cock-up" deformity of the fifth toe on both feet and to revise the results of previous surgery. The Employer has denied payment for the charges relative to the surgery.

Question or Dispute

Is the Employer responsible for payment of the charges incurred by the Employee's dependent as a result of her outpatient podiatric surgery?

Positions of the Parties

Position of the Employee: The Employer is responsible for payment of the charges for the surgery performed in the podiatrist's office.

Position of the Employer: The Employer is not responsible for payment of the charges because the Plan provides coverage for major podiatric surgery only when it is performed in a hospital.

The Employer contends that this surgery constitutes "major surgery" and, since it was not performed in the hospital, is therefore not a covered benefit.

Pertinent Provisions

Article III A. (3) (n) of the Employer's Benefit Plan provides:

Article III: Benefits

A. Health Benefits

(3) Physician's Services and Other Primary Care

(n) Primary Care - Podiatrists' Services

Benefits are provided for minor surgery rendered by a qualified licensed podiatrist. Routine care of the feet such as trimming of nails, the treatment of corns, bunions (except capsular or bone surgery therefor) and calluses is excluded.

Covered minor surgery includes surgery for ingrown nails and surgery in connection with the treatment of flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet.

Benefits for major surgical procedures rendered by a licensed podiatrist are not provided, except if such surgery is rendered in a hospital.

Discussion

Under Article III A. (3)(n) of the Employer's Benefit Plan, benefits are provided for minor surgery rendered by a qualified licensed podiatrist. There is no requirement that minor surgery be performed in a hospital or that the prior approval of the Plan Administrator be obtained.

The Employee's dependent daughter underwent surgery to correct a "cock-up" deformity of the fifth toe of both feet and to revise the results of previous surgery. This surgery was performed on an outpatient basis by a podiatrist in his office. The Employer's rationale for denying this claim is that these procedures constitute major surgery.

The Funds' medical staff and physician consultant have reviewed this case and have determined that this surgery is generally considered minor surgery which can be performed by a podiatrist in

an outpatient setting. None of the surgical procedures performed is difficult or hazardous. These procedures were performed as surgical management for basically minor problems.

Because these procedures constitute minor surgery and were performed for the treatment of symptomatic non-routine complaints of the feet, the Plan provisions regarding podiatry services have been satisfied.

Included in the documentation submitted by the Employer, the Trustees note correspondence addressed to the Employer in which the carrier's representative asserts the intent of the negotiators regarding podiatric services as a basis for denying coverage. Not only is the assertion incorrect, but it is presumptuous of a non-participant in the bargaining process to address the intent of the settlors.

Furthermore, since the Trustees have not been provided with the requested copy of the Employer's Benefit Plan, they are unable to determine who has been designated as the Employer's Plan Administrator. Designating a Plan Administrator is required by the Plan. The Employer's position in this case appears to have been furnished to the Trustees by a consultant to the Employer. The Trustees are concerned that the responsibilities of the Plan Administrator may have been delegated to an individual who does not appear to have been designated as the Employer's Plan Administrator. In their opinion, any such delegation would not appear to be in the best interests of the Employer and its Employees.

Opinion of the Trustees

The Employer is responsible for providing benefits for podiatric surgery performed on the Employee's daughter on November 5, 1983.